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Public Prosecutor v Mohd Azrin Mohd Nor

HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL NO 47–1 OF 2000
MOHD HISHAMUDIN J
12 NOVEMBER 2003

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Criminal Law and Procedure — Dangerous Drugs — Trafficking — Trafficking dangerous drugs allegedly for selling — Whether elements of selling proved — Amendment of charge — Dangerous Drugs Act 1952 s 39B(1)(a)

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The accused was originally charged under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA') and the charge was subsequently amended. The charge against the accused was for trafficking cannabis allegedly for selling the same. At the end of the prosecution case the accused was acquitted and discharged on the ground that the prosecution had failed to establish a *prima facie* case.

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Held, acquitting and discharging the accused:

(1) There was nothing in their evidence that established the fact that the accused was selling the package containing the said 431.2 grams of cannabis (the subject matter of the charge) to PW5. At best there was only evidence of the accused offering to sell the package (see para 23). When a person

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is charged for trafficking cannabis allegedly for selling the same, mere evidence of only an offer to sell the cannabis by that person, is insufficient to establish the act selling. There must be evidence of a sale having taken place, with that person being the seller (see para 24).

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(2) There must also be evidence of the property in the cannabis being transferred from the accused to PW5 by taking the guide of s 4(3) of the Sales of Goods Act 1957 ('the SOGA'). But the question of whether or not there was transfer of the property in the cannabis from the accused to PW5 did not arise if in the first place there had been no acceptance by PW5 of the accused's offer (see para 30). Further, there had been no

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sale because there had been no acceptance on the part of PW5 either expressly or by clear inference of the cannabis in the package brought out by the accused when he emerged from among the flower plants (see para 31).

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(3) The credibility of the key witnesses, in particular, PW3 and PW5, was seriously doubted (see para 36). PW3's evidence contained some serious misleading information especially his evidence as to P7 (the first sketch plan) compared with P10 (the second sketch plan) prepared by PW3 after the court's visit to the scene (see para 39). Hence, the evidence by PW3 in respect of P7 amounted to perjury (see para 43). As to PW5,

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there were material inconsistencies between the police report lodge by PW5 after the arrest of the accused and his evidence before this court (see para 44).

[**Bahasa Malaysia summary**

Tertuduh pada asalnya telah dituduh di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB tersebut') dan tuduhan tersebut kemudiannya telah dipinda. Tuduhan terhadap tertuduh adalah mengedar dadah dengan tujuan untuk menjualnya. Di penghujung kes pendakwaan, tertuduh telah dibebaskan dan dilepaskan atas alasan pihak pendakwaan gagal membuktikan satu kes *prima facie*.

Diputuskan, membebaskan dan melepaskan tertuduh:

(1) Tidak terdapat sebarang keterangan yang membuktikan bahawa tertuduh telah menjual bungkusan yang mengandungi 431.2 gram kanabis (subjek tuduhan) kepada PW5. Yang terbaik, hanya terdapat keterangan di mana tertuduh membuat tawaran untuk menjual paket tersebut (lihat perenggan 23). Apabila seseorang itu dituduh mengedar kanabis untuk tujuan menjualnya, keterangan bahawa terdapatnya tawaran untuk menjual kanabis oleh orang itu, adalah tidak memadai untuk membuktikan tindakan untuk menjual. Malah, mesti terdapat keterangan bahawa penjualan telah dilakukan, dengan orang itu menjadi penjual (lihat perenggan 24).

(2) Disamping itu, hendaklah juga terdapat keterangan bahawa kanabis tersebut telah dipindahkan daripada tertuduh kepada PW5 dengan mengambilkira panduan s 4(3) Akta Jualan Barang 1957 ('AJB tersebut'). Tetapi persoalan bahawa pemindahan kanabis daripada tertuduh kepada PW5 tidak timbul jika pada asalnya tidak terdapat sebarang penerimaan oleh PW5 berkenaan dengan tawaran tertuduh (lihat perenggan 30). Malah, tidak terdapat sebarang penjualan kanabis memandangkan tidak terdapat sebarang penerimaan kanabis di dalam bungkusan di pihak PW5 secara nyata atau inferens yang telah dibawa keluar oleh tertuduh dari pokok-pokok bunga (lihat perenggan 31).

(3) Kredibiliti saksi-saksi utama, khususnya PW3 dan PW5 adalah sangat disangsikan (lihat perenggan 36). Keterangan PW3 mengandungi informasi yang mengelirukan secara serius terutamanya P7 (rajah kasar pertama) dibandingkan dengan P10 (rajah kasar kedua) yang telah disediakan oleh PW3 sendiri selepas lawatan mahkamah ke tempat kejadian (lihat perenggan 39). Maka, keterangan PW3 terhadap P7 terjumlah kepada sumpah berbohong (lihat perenggan 43). Merujuk kepada PW5 pula, terdapat ketidakkonsistenan yang material antara laporan polis yang dibuat oleh PW5 selepas tangkapan tertuduh dan keterangannya di mahkamah (lihat perenggan 44).]

Notes

For cases on trafficking dangerous drugs, see 4 *Mallal's Digest* (4 th Ed, 2003 Reissue) paras 112–120.

Cases referred to

Public Prosecutor v Mohmmed Halipah [1982] 1 MLJ 155 (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 2, 39B(1)(a), (2)
Sales of Goods Act 1957 ss 4(3), 5(1)

Wong Chiang Keat (Deputy Public Prosecutor) (Attorney General's Chambers) for the prosecution.

Suria Kumar (Selvarasan with him) (Suria Kumar & Co) for the accused.

Mohd Hishamudin J:

[1] In this case, the accused was originally charged as follows:

> Bahawa kamu pada 14 Jun 1999, jam lebih kurang 9.05mlm, di hadapan rumah No 219, Jalan Cecawi 1, Kampung Batu 10, Jalan Cheras, Kajang, di dalam Daerah Hulu Langat, di dalam Negeri Selangor Darul Ehsan, telah memperedarkan dadah berbahaya iaitu 431.2 gram cannabis; dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah s39B(2) Akta yang sama.

[2] In the course of the trial, while the third prosecution witness was in the midst of being cross examined by the defence, I discovered that the photographic evidence did not tally with the sketch plan (P7) tendered by the prosecution. Accordingly, after seeking the views of both the deputy public prosecutor and the defence counsel, I decided to visit the scene of the alleged crime (the visit by the court was carried out on 17 January 2001). When the court reconvened (on 4 December 2001) after the visit, the learned deputy public prosecutor applied and was allowed to amend the charge to as follows:

> Bahawa kamu pada 14 Jun 1999, jam lebih kurang 10mlm, di hadapan rumah No 219, Jalan Cecawi 2, Kampung Batu 10, Jalan Cheras, Kajang, di dalam daerah Hulu Langat, di dalam Negeri Selangor Darul Ehsan, telah memperedarkan dadah berbahaya iaitu 431.2 gram cannabis; dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum dibawah seksyen 39B(2) Akta yang sama.

[3] It will be noted that the charge is for the offence of trafficking in 431.2 grams of cannabis, an offence under s 39B(1)a) of the Dangerous Drugs Act 1952 ('the DDA'). It is a capital offence and the penalty upon conviction is the mandatory sentence of death stipulated by s 39B(2) of the Act.

[4] At the end of the case of the prosecution, I acquitted and discharged the accused on the ground that the prosecution had failed to establish a *prima facie* case.

[5] I will now explain my decision.

[6] A key prosecution witness in the present case was one ASP Azizan (PW3), head of the Narcotic Division, IPD Hulu Langat, Kajang. He testified that on 14 June 1999 at 8.30pm he held a briefing at his office. Present at the briefing were the following police officers:

(1) Corporal Chew (PW6);

(2) L/Corporal Maarof;

(3) L/Corporal Jamalludin;

(4) L/Corporal Fauzi; and

(5) L/Corporal Ramie (PW5).

[7] At the briefing, he informed the officers present that he had received information pertaining to drug trafficking activities at an address at No 281, Kampong Batu 10, Cheras, Kajang. He instructed L/Cpl Ramie (PW5) to go to the said address and act as a drug buyer.

[8] At 9.30pm PW3 and his men proceeded to the said address. It was a single storey bungalow house.

[9] PW3 gave evidence that he and L/Cpl Maarof positioned themselves about 15 to 20 meters to the right of the house; whilst Cpl Chew, L/Cpl Jamaluddin and L/Cpl Fauzi positioned themselves in front but across the front road of the said house. PW3 described the road as Jalan Cecawi 1.

[10] About 10 to 15 minutes later, he observed L/Cpl Ramie (PW5) discussing with the accused. Then he heard PW5 shouted 'Police!' three times. He and his men rushed to the place where PW5 was. Upon reaching there, he saw that PW5 had already detained the accused. PW3 directed the accused to pick up a plastic package which the accused was alleged to have thrown away. The accused did so and handed the package to PW3. The latter opened the package and found it to contain a compressed substance which he suspected of being cannabis.

[11] According to PW3, he arrested the accused and explained to him the reason for the arrest.

[12] The government chemist, PW4, analysed the content of the package and found it to contain 431.2 grams of cannabis.

[13] The next important witness for the prosecution was L/Cpl Ramie (PW5) himself, the agent provocateur. He testified that on the night in question at about 8.45pm he attended a briefing conducted by PW3. After the briefing, he, at about 9.45pm, proceeded to Batu 9 to meet up with a source, an informer (whose identity was not disclosed to the court). He met the source at a video game shop. Then he and the informer proceeded on a motorcycle driven by PW5 (with the informer riding pillion) to the house of the accused.

[14] While he and the informer were on their way to the accused's house, PW3 and his officers positioned themselves near the targeted house.

[15] Upon arrival at the vicinity of the accused's house, the informer introduced PW5 to the accused. Having so introduced, the informer left PW5 and the accused to discuss between themselves. PW5 informed the accused that he was interested in buying cannabis. The accused said:

Sekarang susah bang. Dan stokpun cuma ada setengah kilo sahaja.

[16] PW5 told the accused that he wanted half a kilo.

[17] The accused informed PW5 that the price for half a kilo was RM750. PW5 bargained for RM700 and the accused agreed. The accused then went towards some flower plants and about two minutes later called out to PW5:

Abang, ke sini.

[18] As to what happened thereafter, this is what PW5 said in evidence:

Semasa suspek memanggil saya, saya nampak dia secara samar-samar datang menuju ke hadapan rumahnya di bawah garage kereta. Pada masa itu, saya masih berada di bawah pokok. Selepas dipanggil saya pun menuju kepada suspek, melalui kawasan jalan di hadapan rumahnya, yang agak terang kerana ada lampu padang badminton di sana. Tujuan saya ialah supaya anggota lain nampak saya berjumpa dengan suspek. Saya pun terus menghampiri suspek sehingga jarak 2 atau 3 kaki dari suspek; dan saya nampak suspek membawa satu bungkusan lutsinar. Suspect mengatakan kepada saya bahawa itulah barang tersebut. Saya tak ingat perkataan-perkataan suspek sebenar. Seterusnya, saya nak tengok barang tersebut. Jadi, suspek telah membenarkan. Pada masa itu handphone saya telah berbunyi di mana ASP Azizan telah menalipon saya bertanya sama ada kumpulan saksi polis yang lain boleh membuat serbuan ketika itu. Saya hanya boleh menjawab dengan isyarat sahaja kerana saya takut suspek akan mengesyaki yang saya adalah seorang anggota polis. Saya terus tamatkan percakapan handphone saya. Isyarat yang saya beri itu ialah:

Boleh masuk sekarang.

Setelah saya tamatkan percakapan handphone saya, saya menghampiri suspek lebih rapat dan cuba memegang bungkusan tersebut. Apabila saya pegang saya rasa satu ketulan mampat. Selepas itu, saya berundur satu langkah ke belakang sambil menganggukkan kepala saya. Selepas itu, saya cuba melengak-lengahkan keadaan seperti untuk mengambil duit. Tujuan saya berbuat demikian ialah supaya anggota polis yang lain datang membuat serbuan. Apabila saya rasakan bantuan anggota polis tidak sampai. jadi saya pun terus memperkenalkan diri sebagai polis dan menjerit:

Polis! Polis!

Semasa saya memperkenalkan diri sebagai polis, suspek cuba melarikan diri dan saya telah mencekak baju suspek di bawah kolar baju di bahagian depan. Pada ketika itu, saya nampak suspek telah mencampakkan bungkusan plastik lutsinar

tadi ke arah celah pokok bunga. Ketika saya mencekak baju suspek, berlaku satu pergelutan di antara saya dengan suspek. Pada ketika itu juga bantuan anggota yang lain datang dan membantu dan suspek dapat ditangkap. Setelah suspek ditangkap, saya telah memberitahu ASP Azizan bahawa suspek telah membuang bungkusan tersebut, sambil menunjukkan ke arah celah pokok bunga. Saya nampak ASP Azizan arahkan suspek supaya mengambil barang itu dan memberikan kepada ASP Azizan dengan tangan kanannya. ASP Azizan telah membuka barang bungkusan plastik itu di hadapan suspek dan anggota polis yang lain. Didapati didalamnya mengandungi ketulan mampal disyaki ganja.

[19] Section 2 of the DDA defines 'trafficking' as follows:

'trafficking' includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, keeping, concealing, buying, *selling* giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug. (Emphasis mine.)

[20] The Act, however, does not define 'selling'.

[21] The learned deputy public prosecutor, En Wong, in presenting his written submission on 4 November 2003, orally confirmed that for the purpose of proving the act of trafficking, he is not relying on any legal presumption under the Act but would be merely relying on the word 'selling' in the definition of trafficking in s 2 of the Act, and submitted that on the evidence presented by the prosecution, the accused was guilty of committing an act of selling 431.2 gram cannabis at the time and place as specified in the charge. The learned DPP refers to *Public Prosecutor v Mohmmed Halipah* [1982] 1 MLJ 155.

[22] This being the case, in order for the prosecution to succeed in establishing a *prima facie* case of trafficking of the specified amount of cannabis as mentioned in the charge, there must be evidence of selling of the same by the accused.

[23] The first ground for my holding that there was no *prima facie* case is that, on the supposition for the moment that I were to accept the above evidence of PW3 and PW5, there was nothing in their evidence that established the fact that the accused was selling the package containing the said 431.2 gram of cannabis (that is, the subject matter of the charge) to PW5. At best there was only evidence of the accused offering to sell the package.

[24] In my view, when a person is charged for trafficking cannabis allegedly for selling the same, mere evidence of only an offer to sell the cannabis by that person, is insufficient to establish the act selling: there must be evidence of a sale having taken place, with that person being the seller.

[25] But when does a *sale* take place. As said earlier, there is nothing in the Act that defines 'selling' (or 'sale'). Hence, in my opinion, to the Sales of Goods Act 1957 ('the SOGA') we must look for guidance. Section 4(3) of the Act provides:

A (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, …

[26] And s 5(1) provides:

B (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. …

[27] However, before I proceed further, lest I am misunderstood, I pause to say here that the provisions of the SOGA cannot apply to the transaction in the present case because the transaction in the present case is an illegal sale. C But, as I have said just a moment ago, the SOGA is only meant to be used as a guide (or as an analogy).

[28] Therefore, with this understanding in mind, in my opinion, as to the issue at hand, in order for there to be a sale having taken place between the accused and PW5, there must first be evidence of acceptance by the PW5 of D the offer to sell by the accused. Without such an acceptance, there can never be a sale.

[29] That the acceptance of the offer is an essential element of setting is reflected in *Public Prosecutor v Mohamed Halipah*, the case cited by the prosecution. E In this case, Yusof Abdul Rashid J held (at p 155):

> 1 am satisfied beyond reasonable doubt that the accused was selling 14.24 grammes of heroin and 3.62 grammes of morphine to DPC Zainal, for a sum of $700. It is common knowledge that the 'selling' and 'buying' transaction is complete when the parties to such sale have made an offer to sell a commodity at a certain price F and the other has accepted such an offer at the said price. Thereafter it remains for the money to change hands which is not the vital part in the sale transaction for, a sale may yet be complete credit.

[30] In addition, taking the cue from s 4(3) of the SOGA, there must also G be evidence of the property in the cannabis being transferred from the accused to PW5. But the question of whether or not there was transfer of the property in the cannabis from the accused to PW5 does not arise if in the first place there has been no acceptance by PW5 of the accused's offer.

[31] Thus, in the present case, guided by the SOGA, the question that must H first be asked is this: was there an unequivocal acceptance by PW5, either expressly or by clear inference, of the accused's offer to sell the cannabis in the plastic package, the subject matter of the charge? In my judgment, the answer must be in the negative. To my mind, no sale had taken place between the accused and PW5. There had been no sale because there had been no I acceptance on the part of PW5 either expressly or by clear inference of the cannabis in the package brought out by the accused when he emerged from among the flower plants.

[32] Now, let us analyse the evidence. From the evidence, as set out in detail above, PW5 first wanted to examine the package brought out by the accused when he re-emerged. For he had said in evidence (to repeat):

> Seterusnya, saya nak tengok barang tersebut.

[33] However, before he could do so, there was the interruption by the phone call of PW3, So, he did not then, at that point of time, proceed to examine the package. Instead PW5, after he had finished dealing with the phone call, he moved closer to the accused, touched the package (that the accused was then holding in his hand), felt the content, and then stepped backward and nodded. No explanation whatsoever was given by PW5 as to why he decided not to proceed to examine the package or as to what the moving closer, touching and the nodding meant, or whether he was satisfied with the package; and, considering that I am dealing with a criminal trial and that any benefit of doubt must be given to the accused, I think it is neither fair nor appropriate for me to draw from these gestures (moving forward, touching the package and nodding) any inference in favour of the prosecution, in particular, an inference that PW5 was satisfied with the package and had accepted the offer of the accused. Anyway, the next thing that PW5 did was, after a brief moment pretending to take out his money (there was, however, no evidence that he had brought any money for the purpose of the 'transaction') was to grab the accused by the collar.

[34] It appears, therefore, that PW5 had not at any time evinced his satisfaction of the package or his acceptance of the accused's offer to sell the package. Thus, to repeat what has been said earlier, there was no evidence that there was an unequivocal acceptance on the part of PW5 of the accused's offer to sell to him the cannabis in the plastic package.

[35] In short, there was no sale 'transaction' between the accused and PW5. What had taken place prior to the arrest was an incomplete sale transaction: merely a negotiation between the accused and PW5 as to the price for a half kilogram of cannabis followed by an offer to sell a plastic package containing 431.2 grams of cannabis by the accused to PW5. There had been no acceptance by PW5 of the accused's offer; let alone transfer of the property in the drugs in the package from the accused to PW5. There would, however, have been a sale if, before apprehending the accused, PW5 had said or indicated unequivocally to the accused that he agreed to buy the package and then proceed to take possession of the package from the accused.

[36] The above analysis of the evidence, however, is based on the hypothesis that the evidence of PW3 and PW5 can be believed. But, can they be believed? On this issue it is my finding that the credibility of the key witnesses, in particular, PW3 and PW5, is seriously doubted.

[37] I shall first deal with the evidence of PW3. This witness, in his evidence, had materially misled the court. Although he was the leader of the police operation party, holding the rank of assistant superintendent, yet his evidence contained some serious misleading information. First, he said that the house of the accused was located at Jalan Cecawi 1, when in actual fact the house was located at Jalan Cecawi 2. But more serious, he had in his evidence referred to the court a sketch plan (the first sketch plan, P7) made by Inspector Tega Bilong (PW8), the investigating officer of the case, which contained several untrue information. PW3 being a senior police officer, was present at the scene, and had taken active part in arranging the trap and the arrest of the accused must have noticed the errors; and should have brought them to the notice of the court. Indeed, he was duty bound to do so. But he did not point out the obvious mistakes to the court. Instead, he confidently referred to the sketch plan in his evidence as if the sketch plan was without serious flaws and served a useful purpose. And he even made some markings on the sketch plan to show certain alleged locations that he mentioned in his evidence. However, during cross-examination, when I compared the sketch plan with the photographs of the scene of the alleged crime (which was also tendered as evidence by the prosecution), I suspected that something was not right: for the sketch plan and the photographs somehow did not seem to tally. So, I decided to officially visit the scene of the alleged crime, and that visit by the court confirmed my suspicion regarding the errors (and to repeat what I have said at the beginning of this judgment, the prosecution's application to amend the charge was only made after this visit to the scene by the court).

[38] The following are some of the untrue information contained in the original sketch plan, P7:

(a) the location of Jalan Cecawi 1;

(b) the location of the car garage in front of accused's house;

(c) the absence of Jalan Cecawi 2 (the sketch plan should have shown the presence of this road);

(d) the location of accused's house;

(e) the location of the tennis courts (gelanggang); and

(f) the existence of a street light near the garage when in actual fact there was no such street light.

[39] The extent of the errors can be best appreciated if we were to compare the original sketch plan, P7, which was prepared by PW8 and the fairly accurate sketch plan, P10, which was prepared by PW3 after the court's visit to the scene. It will be noticed that the original sketch plan P7 is totally misleading. P7, in the first place, should never have been used by the prosecution in the proceedings.

[40] How far PW3 had in his evidence in chief misled the court, by referring to P7, can be further appreciated if we were to refer to the evidence of PW3 during cross-examination after the court visit to the scene (cross-examination of PW3 on 6 December 2001).

[41] But the following evidence of PW3 during examination-in-chief do demonstrate that this officer had no qualm or reservation about using the sketch plan P7 in his evidence, although he knew or should have known that it contains serious misleading information:

> (Satu rajah kasar dirujuk kepada saksi.)
>
> Saya faham dengan rajah kasar. Rajah kasar ini menunjukkan tempat kejadian, Saya bersama L/Kpl Maarof masuk ke tempat kejadian melalui Jalan Besar yang ditanda 'KE KUALA LUMPUR'. Saya bersama L/Kpl Maarof berada di sebelah kanan rumah nombor 219. (saksi tanda 'X' dengan marker rumah No 219.) L/Kpl Ramli berbincang dengan tertuduh di tempat yang saya tanda 'Y' (saksi tanda 'Y' dengan marker biru). 'Y' ialah tempat letak kereta (car porch). Saya bersama L/Kpl Maarof berada di sebelah kanan rumah No 219, di seberang jalan. Kami berada berhampiran sebuah rumah, dekat dengan tiang lampu (saksi tanda 'Z' dengan marker merah untuk menunjukkan tempat beliau berada) Manakala Kpl Chew, L/Kpl Jamaluddin dan L/Kpl Fauzi berada berhadapan dengan rumah No 219 di seberang Jalan Cecawi 1 (saksi tanda 'W' dengan marker merah). (Rajah kasar di tanda sebagai ID7.)

[42] All the above markings 'X', 'Y', 'Z' and 'W' in P7 made by PW3 to denote various locations as referred to by him in his evidence are incorrect.

[43] I think it is fair to say that the evidence of PW3 during examination-in-chief in respect of P7 amounts to perjury. In his examination-in-chief he had taken the court 'for a ride'. It is, in my judgment, unsafe to convict an accused based on a perjured evidence of a key witness.

[44] The evidence of PW5 is also highly suspect. A few hours after the arrest of the accused, he lodged a police report (P14). As a police officer, PW5 should have known the importance of the police report. Yet, it is to be observed that there are, however, several material inconsistencies between his police report and his evidence before this court.

[45] First, as we have seen, in his evidence he had mentioned in some detail about the role of the source/informer. But, remarkably, in his police report, there is not the slightest mention about the informer/source, who had played an important role in the operation.

[46] Second, in his evidence PW5 said he bargained with the accused as to the price of the half a kilogram of cannabis that he intended to purchase. He managed to have the price reduced from RM750 to RM700. In his police report, however, no mention is made of this bargaining.

[47] Third, in his evidence he said he wanted to buy half a kilogram of cannabis from the accused. However, in his police report he said he told the accused that he wanted to buy one kilogram of cannabis. There is nothing in PW5's report stating that the accused had told him (PW5) that he (the accused) could only supply half a kilogram of cannabis. In his report, it is clear that PW5 merely said:

> Pada jam 9.30mlm tarikh yang sama saya sampai di hadapan sebuah rumah yang kemudian dikenali dengan alamat No 219, Kg Batu 10, Jln Cheras. Kajang, dan telah bertemu dengan seorang lelaki Melayu dan terns memesan dadah ganja sebanyak (1) kilo. Lelaki itu kemudian minta saya tunggu dan kemudian beredar dari tempat saya.. Selang beberapa minit kemudian saya nampak lelaki Melayu itu tadi menuju ke arah saya sambil memegang satu bungkusan plastik lutsinar.

[48] Fourth, as we have noted earlier, PW5, in his evidence, had said that he deliberately delayed arresting the accused. He said that after the accused reemerged from among the flower plants, he had told the accused that he wanted to examine the package and that (after the phone call from PW3) he then moved closer to the accused, touched the packet, stepped backwards (atthe same time nodding his head), and waited for some time (by pretending to get his money) for PW3 and the others to rush in for the arrest. When PW3 and the others were not forthcoming, only then did he proceed to introduce himself as a police officer and to arrest the accused.

[49] However, in his police report he said the arrest was made *immediately* after the accused had reemerged. He said:

> Selang beberapa minit kemudian saya nampak lelaki Melayu itu tadi menuju ke arah saya memegang satu bungkusan plastik lutsinar. Apabila lelaki Melayu itu menghampiri saya, saya terus memperkenalkan diri polis sambil menjerit 'Polis-Polis' dan berjaya menangkapnya dalam satu pergelutan.

[50] Fifth, in his police report he mentioned:

> (AB: 579 grams)

[51] Yet when cross-examined on this statement by the defence he was evasive in his answers. This can be seen from the following evidence:

> (P14 (report) dirujuk kepada saksi)
>
> (Baris kedua dari bawah)
>
> Q: Apa maksud kamu dengan '(AB: 579 grams)'?
>
> A: Saya tidak pasti
>
> Q: Bagaimana kamu mendapat angka 579 grams ini?
>
> A: Saya tidak ingat.

[52] The conduct of Insp Tega Bilong (PW8) must also be severely criticised; for he was the investigating officer and he was the one who had prepared P7.

P7, besides being grossly misleading was also a shoddy piece of work. It is difficult to imagine that the author of P7 is a police officer holding the rank of an Inspector.

[53] Still on the credibility of PW3 and PW5, there are discrepancies in their evidence. First, PW5 in his evidence mentioned in some detail of the role of the source/informer. However, PW3 in his evidence made no mention at all of the source/informer. PW3's evidence seems to suggest that the informer did not exist at all. Indeed, PW3 in his evidence consistently maintained that from his observation there wasn't a third person during the negotiations between PW5 and the accused.

[54] Second, PW5 in his evidence, mentioned about PW3 calling him on the handphone while he was dealing with the accused, inquiring as to whether he (PW3) could rush in for the arrest. He also said in evidence that he told PW3:

> Boleh masuk sekarang

[55] But PW3 in his evidence made no mention at all about this important telephone communication; nor did he mention of any uncertainty as to when to strike.

[56] Finally, the evidence of both PW3 and PW5 as to *how* or *when* the arrest (or the 'strike') was supposed to be executed either by PW5 or by PW3 and the others, or by all of them in concert was unclear and incoherent It also does not seem to make sense (indeed, I would even say that it was foolish of PW3, assuming PW5 was telling the truth!) for PW3 to call PW5 over the handphone when the latter was in the midst of negotiating with the accused, all the more so when the purpose was to inquire whether the team could rush in for the arrest. For, it was highly risky to do so. And, moreover, what was the necessity for the call when, as claimed by PW3 in his evidence, from the position where he was, he was able to see what was going on between PW5 and the accused?

Accused acquitted.

Reported by AG Kalidas